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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,795	03/06/2006	Ronald J. Craswell	109927-134542	4331
25943	7590	07/26/2007	EXAMINER	
SCHWABE, WILLIAMSON & WYATT, P.C. PACWEST CENTER, SUITE 1900 1211 SW FIFTH AVENUE PORTLAND, OR 97204			ROBINSON, GRETA LEE	
			ART UNIT	PAPER NUMBER
			2168	
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			07/26/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/538,795	CRASWELL ET AL.
	Examiner Greta L. Robinson	Art Unit 2168

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 06 March 2006.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-19 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-19 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 13 June 2005 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 09/23/05

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

**DETAILED ACTION**

1. Claims 1-19 are pending in the present application.

***Priority***

2. Acknowledgement is made that this application is a continuation of application PCT/US03/32295 filed October 10, 2003 and claims benefit of provisional application 60/417,795 filed October 10, 2003.

***Information Disclosure Statement***

3. The information disclosure statement (IDS) submitted on September 23, 2005 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the examiner, note attached copy of form PTO 1449.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to

one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The following limitation does not appear to be described within the disclosure “strongly collision free deterministic identifier”, note the disclosure references a user identifier, device identifier, file identifier, and action\_type identifier; however there does not appear to be reference to a strongly collision free deterministic identifier [see: page 11 lines 3-24; note claim 1 line 5; claim 11 line 6; claim 12 line 5; and claim 16 line 4]. Also the disclosure does not appear to describe how the identifier is generated [see claim 1 line 6; claim 12 line 3]. Claims 2-10 and 12-15 are rejected based on dependency.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1, 11, 12, and 16, the following claim language is vague and/or not clear: “strongly collision free deterministic identifier” [see: claim 1 line 5; claim 11 line 6; claim 12 line 5; and claim 16 line 4]. Claims 2-10 and 12-15 are rejected based on dependency.

Regarding claim 17, the following claim language is vague: only if said separate identifier does not correspond to previously backed up data on the server apparatus,

receiving said data from said client device" [see claim 17 lines 9-10]. The phrase is not clear. Also, it is unclear as to what type of "identifier" is being used; note the disclosure makes reference to a user identifier, device identifier, file identifier, and action\_type identifier [see: page 11 lines 3-24]. Claims 18 and 19 are rejected based on dependency.

Regarding claim 1, the following limitation is vague: "only if said backup server indicates that said data is not already available to said backup server, send said data to said backup server" [see claim 1 lines 9-10]. It is unclear as to how the data can be backed-up if it is not available. Claims 11, 12 and 16 contain similar language and are therefor rejected for similar reasons. Claims 2-10 and 12-15 are rejected based on dependency.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 1-3, 9-12 and 14-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dutta et al. US Patent Application Publication No. 2002/0156921 A1.

Regarding claim 1, **Dutta et al.** teaches a *wireless computing apparatus* [note: Figures 1, 3, and 5 ; paragraph 0017 a cellular wireless network 112] having a *processor* [note: paragraph 0033 processors 202 and 204]; and a *memory* comprising executable instructions which, when executed are operative to [note: paragraph 0033 ]; designate data on the wireless computing apparatus to *backup* [note: paragraph 0043; Figure 5 requesting backup ]; generate a strongly collision free deterministic *identifier* for said data [note: application identified by SL paragraph 0045-0046 ]; communicate said strongly collision free deterministic identifier to a *backup server* [note: Figure 7]; and only if said backup server indicates that said data is not already available to said backup server, *send said data to said backup server* [note: paragraph 0022; paragraph 0023-0024 wireless application protocol (WAP) defines the protocol; paragraph 0027 special protocols; paragraph 0031 Data Backup Server 170 provides backup for wireless

devices such as PDAs; paragraph 0046 sends data to backup server; backup may be predefined paragraph 0043]. Although Dutta et al. teaches the invention substantially as cited above, they do not explicitly teach backup only if data is not already available; however they do teach predefined conditions for backup. It would have been obvious to one of ordinary skill at the time of the invention to have implemented a specific protocol from backup since Dutta et al. teaches implementation of special protocols; such enhancements gives the end user greater flexibility in determining when and how data is to be backed up.

10. Regarding claims 2 and 3, wherein the apparatus further comprises a transceiver ... wherein the data is sent in compressed form .... [note: Figures 1 and 2; paragraphs 0022 and 0027 ].

11. Regarding claim 9 and 10, further comprising a designating a data type not to backup from the wireless computing apparatus .... a data location .... [note: paragraph 0043 push a content type for backup ].

12. Regarding claim 11, select a backup compilation ... receiving said restoration data from said backup server [note: Figures 7 and 8; paragraph 0048; paragraph 0055 reloading backed up data ].

13. The limitations of claims 12 and 14-19 have been addressed above; therefore they are rejected under the same rational.

***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Monday US Patent Application Publication No. 2003/0018657

Markkanen US Patent 7,240,079 B2

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greta L. Robinson whose telephone number is (571)272-4118. The examiner can normally be reached on M-F 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tim T. Vo can be reached on (571)272-3642. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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PRIMARY EXAMINER  
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July 20, 2007